



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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Date: 9/25/2009

Contact Person:  
Identification Number:  
Telephone Number:  
Employer Identification No.:

Section 4943 -- Excise Taxes on Excess Business Holdings  
4943.00-00 Excise Taxes on Excess Business Holdings

Legend:

Museum =  
Founder =  
Company =  
C =  
x =  
Date a =  
Date b =  
Date c =

Dear :

This is in response to your letter dated December 23, 2008, requesting an extension for an additional five years under section 4943(c)(7) of the Internal Revenue Code ("Code") for disposing of certain excess business holdings.

Facts:

You are exempt from federal income tax under section 501(c)(3) of the Code and are classified as a private foundation within the meaning of section 509(a). Your purpose is to support the conservation and operation of Museum.

Founder died in June 1999 and his will directed that his probate assets be distributed to the trustees of his revocable trust. The revocable trust, in turn, called for assets to be distributed to your trustees. As a result of the various distributions, Founder's interest in Company, which amounted to 100% of the outstanding stock in Company, ultimately passed to you. While the stock certificates have been lost, there was an assumed transfer of stock to you on Date a. Since the ownership of Company constituted an excess business holding, you immediately began to seek a buyer for Company. To date, over five years since ownership of Company was transferred to you, although

several parties have expressed interest, and although you have employed a strategy in attempting to find a qualified investor or purchaser for Company, you have been unable to sell your interest in Company.

You represent that you have made diligent efforts to dispose of all excess business holdings. In addition to the Company stock, you became the sole owner of a real estate investment trust. You were successful in finding a buyer for the real estate investment trust.

Following the death of Founder, your trustees discovered that Company did not have adequate records or adequate accounting procedures. At that time, Company also lacked a suitable computer system to track inventory and enable proper pricing of its products. An appraisal of Company was obtained from an independent accounting firm, but because the appraisal was based upon the information then available, the trustees later discovered that the appraisal may not have been entirely reliable. The trustees were uncomfortable marketing Company without having adequate information to establish the value of Company, and to allow prospective purchasers to adequately assess the profitability of Company. Therefore, Company quickly hired an independent accounting firm to review its records, establish its inventory and implement sound accounting procedures. The trustees felt that Company should have at least three years of operations before serious efforts to market Company were undertaken. Although there were preliminary discussions with buyers prior to the end of this "organizational" effort, major marketing efforts were delayed by the lack of accounting procedures and records.

Also, the historical process of marketing Company's products was undergoing a complete change. Almost all marketing efforts had been undertaken by C companies. Shortly before Founder's death, these C companies ceased sales operations. The trustees were required to attempt to develop a new marketing strategy for Company. This has proven to be extremely difficult, and only very recently has a new sales effort begun to show results. Your trustees believe that if you are permitted to operate for several years with a new marketing plan, the value of Company will be significantly increased.

During the initial five year period, you have actively engaged in discussions with third parties interested in purchasing Company, and have actively sought serious investors and purchasers. Company has a significant value, and the sale of an asset of this size will have significant consequences to you, especially since you do not actively engage in fundraising activities. While Company was valued at \$x million for estate tax purposes in Founder's estate, the value may be much less due to current economic and business trends.

In calendar year 2008, you engaged in meaningful discussions with four separate parties concerning the sale of Company. Two of those discussions terminated without a final sales agreement in place; two are ongoing. You engaged your lawyer to prepare confidentiality agreements with each of the two most recent prospective buyers, and financial information was disclosed. No firm offer has as yet been forthcoming.

You have experienced difficulty, especially during the last quarter of 2007 and all of 2008, because of the volatility of the financial markets and the onset of the current economic recession. You recognize that the current turmoil in financial markets has

temporarily reduced the market value of Company and you have stated that it may be difficult to locate a buyer in the foreseeable future except at a price substantially below fair market value. However, you represent that you will continue to use your best efforts to sell your interest in Company. You have met with a qualified investment banker and are considering retention of this firm to assist in finding a buyer for Company.

A copy of your plan to sell your interest in Company has been submitted to the Office of the Attorney General of the Commonwealth of Pennsylvania. If and when a response is received from the Attorney General, a copy will be submitted to the Secretary in accordance with section 4943(c)(7)(B)(ii) of the Code.

Prior to Date b, the end of the initial five-year period for disposing of excess business holdings under section 4943(c)(6) of the Code, you submitted a request to the Internal Revenue Service for an extension of five years to complete the required disposition of Company shares.

Ruling Requested:

Under section 4943(c)(7) of the Code, the period during which you may dispose of your Company shares is extended an additional five years until Date c.

Law:

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable or educational purposes.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 4943 of the Code imposes excise taxes on the excess business holdings of any private foundation in a business enterprise.

Section 4943(c)(1) of the Code provides that excess business holdings are the amount of stock in a corporation a private foundation owns that exceeds its permitted holdings. Permitted holdings are 20 percent of the corporation's voting stock less the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(6)(A) of the Code provides that if there is a change in the holdings of stock in a corporation (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have excess business holdings in the corporation, the excess business holdings are treated as being owned by disqualified persons for five years from the date of the change.

Section 4943(c)(7) of the Code provides that the IRS may extend for an additional five years the initial five-year period for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if:

- (A) The foundation establishes that: (i) it made diligent efforts to dispose of such holdings during the initial five-year period, and (ii) disposition within the initial

five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings;

(B) Before the close of the initial five-year period: (i) the private foundation submits to the Internal Revenue Service a plan for disposing of all of the excess business holdings involved in the extension, and (ii) the private foundation submits the plan to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Internal Revenue Service any response the private foundation received during the five-year period; and

(C) The Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Section 53.4943-6(b)(1) of the Foundation and Similar Excise Taxes Regulations ("regulations") provides that in the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the five year period described in section 4943(c)(6) of the Code shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs.

#### Analysis

You are subject to section 4943 of the Code, which imposes a tax on the excess business holdings of private foundations. Generally, under section 4943(c)(2)(A), a private foundation is permitted to hold twenty percent of the voting stock in a business enterprise with any excess constituting excess business holdings. However, if a private foundation acquires holdings in a business enterprise other than by purchase (e.g., by bequest from a will) which causes the foundation to have excess business holdings, then the interest of the foundation in such business enterprise shall be treated as held by a disqualified person (rather than the foundation) for a five-year period beginning on the date such holdings were acquired by the foundation under section 4943(c)(6)(A).

Under section 4943(c)(7) of the Code, however, the Service may extend the initial five-year period for disposing of excess business holdings for an additional five years if you establish that: (i) you made diligent efforts to dispose of your holdings within the initial five year period but were unable to do so because of the size and complexity of such holdings, (ii) you submit a plan for disposing of all excess business holdings in the five year extension period and submit such plan to the state Attorney General, and (iii) the Service determines that such plan can be reasonably be expected to be carried out before the close of the extension period.

You received the bequest of 100% of the shares of Company from Founder, a disqualified person under section 4946 of the Code. Because Founder owned more than 20 percent of Company's shares, the shares of Company that you own constitutes excess business holdings under section 4943(c)(1). Therefore, you are required under section 4943(c)(6) to dispose of these shares during an initial five-year period ending on Date b. During this period, you made diligent efforts to dispose of these shares. However, due to the factors listed above you were unable to dispose of all of your shares in Company. Before the end of the initial five-year period, you submitted a request to the Internal Revenue Service under section 4943(c)(7) of the Code for an

additional five-year period within which to dispose of Company shares. In your request, you described your plan for disposing of all of your shares within an additional five-year period. You also submitted the plan to the Attorney General of your state, who is expected to approve the plan.

Based on the information submitted, we have determined that your plan to dispose of all of your Company shares within an additional five-year period can reasonably be expected to be carried out. We conclude that you meet the requirements under section 4943(c)(7) of the Code for an extension of five years to dispose of all of all of your Company shares.

Ruling:

Under section 4943(c)(7) of the Code, the period during which you may dispose of your Company shares is extended an additional five years, until Date c.

This ruling is contingent upon the state Attorney General approving your plan to dispose of all of your Company shares. This ruling is also conditioned on the understanding that there will be no material changes in the facts upon which it is based.

This ruling is limited to the issue discussed above. It does not cover any other issue or statute, whether or not discussed in the instant ruling request.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. In accordance with the Power of Attorney and Declaration of Representative currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Manager Technical Group 2

Enclosure:

Notice 437